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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/723,692

11/26/2003

James B. McCormick

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EXAMINER

JARRETT, LORE RAMILLANO

ART UNIT

PAPER NUMBER

1797

NOTIFICATION DATE

DELIVERY MODE

09/03/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@THOMPSONCOBURN.COM

<b>Office Action Summary</b>	<b>Application No.</b> 10/723,692	<b>Applicant(s)</b> MCCORMICK, JAMES B.	
	<b>Examiner</b> LORE JARRETT	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/26/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Amendment*

#### *Status of Claims*

1. Applicant's reply filed on 5/27/09 is acknowledged. Claims 1-7 are pending and are under examination.

#### *Prior art rejections*

2. The prior art rejections are withdrawn in light of applicant's arguments and exhibits. New rejection follows.

#### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1, 2, and 7** are rejected under 35 U.S.C. 102(b) as being anticipated by Levine et al. ("Levine," US 4420353, newly cited).

As to claim 1, in figs. 2-6, Levine discloses device for processing tissue, comprising: a foldable liquid permeable sheet (i.e. 8) having edges; a liquid permeable target (i.e. area on 8) disposed on the foldable liquid permeable sheet within the edges of the sheet, thereby providing extended flap portions which flap portions are foldable to overlap the liquid permeable target; and a malleable material securing strip (i.e. 22) attached to the foldable liquid permeable sheet of

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a length sufficient to secure the folded flap portions overlapping the liquid permeable target. With regard to the histological examination liquid, such claim language does not structurally further define the claimed device. (i.e. col. 3, lines 42-54 and col. 4, lines 11-23).

As to claim 2, Levine discloses that the malleable material securing strip is attached at an edge of the liquid permeable sheet (see figs. 3-6).

As to claim 7, Levine discloses X and Y coordinate marking lines on the liquid permeable target (i.e. X coordinate marking lines are 28 and 30 of Fig. 5, and Y coordinate marking lines are the lines formed from the securing strip, see fig. 5).

### ***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. **Claims 3 and 4** are rejected under 35 U.S.C. 103(a) as being unpatentable over Levine in view of Rochette (US 3537636, newly cited).

See Levine Supra. Levine does not specifically disclose having a malleable securing strip comprising a metal wire or a metal foil.

In figures 1-4, Rochette discloses an invention consisting of a reclosable bag formed from a sheet of flexible material. The bag further comprises a bendable metal wire and a pair of flexible coverings strips (i.e. metal foil), which are sealed together and the wire is sandwiched between so that the wire is embedded between the strips (i.e. column 2, line 70 to column 3, line 8).

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At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the malleable securing strip of Levine, with a metal wire and/or with a metal foil because it would be beneficial to have a sealing means that provides reinforcement.

7. **Claim 5** is rejected under 35 U.S.C. 103(a) as being unpatentable over Levine in view of Williamson et al. ("Williamson," US 5817032, newly cited).

See Levine *supra*.

While Levine discloses a reagent on the liquid permeable target prior to the folding of the flap portions (i.e. col. 4, lines 23-39), Levine does not specifically disclose a release agent coated on the liquid permeable target.

Williamson discloses in his abstract, placing a tissue biopsy sample on a tissue trapping and supporting material that can withstand tissue preparation procedures and which can be cut with a microtome. Williamson further discloses spraying a thin layer of agar or other gel over the tissue and filter (i.e. col. 16, lines 43-59).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Levine's liquid permeable target by adding a binder, such as agar, to the tissue sample because adding agar to tissue samples is well known as "cell block preparation," which is a technique that allows the user to easily prepare the sample for analysis (i.e. Williamson, col. 1, lines 32-37).

8. **Claim 6** is rejected under 35 U.S.C. 103(a) as being unpatentable over Levine in view of Levine ("Levine '750," US 4367750, newly cited).

See Levine supra.

While Levine discloses a liquid permeable target, Levine does not specifically disclose that the liquid permeable target is a paper sheet.

Levine '750 discloses a multi-layered assemblage which has the general pliancy and feel of a thickened piece of toilet tissue. The upper layer 4 is a sheet of semi-flexible material such as polyethylene plastic; paper-plastic laminate, or the like. On one side of the upper sheet 4, there is disposed an area comprising a plurality of small openings 6. The half of the sheet 4 which contains the openings 6 has deposited thereon a layer 8 of soft fibrous cellulosic material which is flocked onto the sheet 4 and provides the flocked half thereof with a soft texture similar to tissue paper. Thus, one half of the sheet 4 will have a soft, tissue-like texture, and the other half will have a smooth, shiny texture, like plastic. The flocking, of course, could be extended over the entire sheet 4, or deleted, if desired, without departing from the spirit of the invention. Disposed beneath the openings 6, there is a somewhat enlarged pad 10 of absorbent paper, or the like. (i.e. col. 3, lines 28-68).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Levine's liquid permeable target by specifically utilizing a paper sheet because it is well known in the art and it is the common type of medium used for stool sampling analysis (i.e. Levine '750, col. 1, lines 4-68).

***Response to Arguments***

9. Applicant's arguments, see p. 4-20, filed 5/27/09, with respect to the rejections of claims 1-7 been fully considered and are persuasive. Therefore, the rejections have been withdrawn. However, upon further consideration, new grounds of rejections are made (see supra).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LORE JARRETT whose telephone number is (571)272-7420. The examiner can normally be reached on Mon. to Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LORE JARRETT/  
Examiner, Art Unit 1797

8/30/09